

REMARKS

Claims 1 through 21 are in the application, with Claims 1, 7 and 17 having been amended. Claims 1, 7, 17, 19 and 21 are the independent claims herein. No new matter has been added. Reconsideration and further examination are respectfully requested.

Claim Rejections – 35 U.S.C. 101

Claims 1-17 of the claimed invention are rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. It is believed that this rejection has been overcome by the above-indicated amendments to claims 1, 7 and 17, such that those claims now are tied to a particular apparatus. Support for the amendments is found, for example at page 8, lines 10-18 and page 13, line 26 to page 14, line 13 of the specification of this application and in FIG. 4 of this application.

Claim Rejections – 35 U.S.C. 103(a)

Claims 1-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shearman in view of U.S. Patent Publication 2003/0225656 to Aberman et al. (Hereinafter “Aberman”).

Applicants respectfully traverse this rejection for reasons that are set forth below.

Applicants believe that the Examiner has based this rejection on several incorrect assertions, and that these errors render the rejection itself incorrect.

First, the Examiner implies (but does not expressly state) that it would be obvious to modify the teachings of the Shearman reference to arrive at a combination of capped and uncapped remarketing. In support of this apparent position, the Examiner contends that “it would be obvious to one skilled in the art that both, capped and uncapped remarketing are possible”. Initially with respect to this point, applicants note that the Examiner has failed to articulate any reason or motivation for such a proposed modification of Shearman. Further, although both capped and uncapped remarketing are “possible” in the sense that both have been used separately as alternatives to each other, the prior art has not shown any awareness of any possible motivation for combining the two different types of remarketing. Thus, as to the

combination of capped and uncapped remarketing the Examiner has failed to present a *prima facie* case of obviousness.

Second, the Examiner cites the Aberman reference as allegedly teaching that the unit is treated as Tier 1 capital as a result of the combination of capped and uncapped remarketing. In this respect, the Examiner cites paragraphs 58 and 59 of Aberman. However, the cited paragraphs do not support the Examiner's position. Rather, these paragraphs say nothing about Tier 1 capital, and at their most pertinent only state that the proceeds of a remarketing may be used to satisfy an investor's obligation.

Further with respect to Aberman, paragraphs 49 and 50 thereof do discuss Tier 1 capital, but only in regard to consequences of a financial institution having a certain Tier 1 capital ratio. There is nothing in these paragraphs or elsewhere in the reference that teaches treatment of a unit as Tier 1 capital as a result of a combination of capped and uncapped remarketing.

Applicants also note that there is nothing about the Examiner's citation of Aberman that overcomes applicants' previous point that the invention produces unpredictable results. In this regard, the Examiner is respectfully referred to the fourth through sixth paragraphs on page 7 of the Supplemental Response filed herein on July 16, 2008.

For the foregoing reasons, it is respectfully submitted that the pending prior art rejection is unsound, and should be reconsidered and withdrawn.

C O N C L U S I O N

Accordingly, Applicants respectfully request allowance of the pending claims. If any issues remain, or if the Examiner has any further suggestions for expediting allowance of the present application, the Examiner is kindly invited to contact the undersigned via telephone at (203) 972-3460.

Respectfully submitted,

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